

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JAMES STEVEN CLAY

Registered Nurse License No. 467819

Respondent.

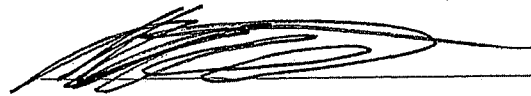
Case No. 2012-303
OAH No. 2011120243

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 3, 2012.

IT IS SO ORDERED this July 3, 2012.



Erin Niemela
Temporary Chair
Board of Registered Nursing
Department of Consumer Affairs
State of California

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Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 CAROL ROMEO
Deputy Attorney General
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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2012-303

13 **JAMES STEVEN CLAY**
1020 Camino de la Serna #1
Taos, NM 87571

OAH No. 2011120243

14 **Registered Nurse License No. 467819**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant), brought this action solely in her capacity
21 as Executive Officer of the Board of Registered Nursing (Board), Department of Consumer
22 Affairs. The Board is represented in this matter by Kamala D. Harris, Attorney General of the
23 State of California, by Carol Romeo, Deputy Attorney General.

24 2. James Steven Clay (Respondent) is representing himself in this proceeding and has
25 chosen not to exercise his right to be represented by counsel.

26 3. On or about August 31, 1991, the Board of Registered Nursing issued Registered
27 Nurse License No. 467819 to James Steven Clay (Respondent). The Registered Nurse License
28 expired on July 31, 2003, and has not been renewed.

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CONTINGENCY

10. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and Board staff may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel.

By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation before the Board acts on it or it becomes effective by operation of law pursuant to the Administrative Procedure Act (Gov. Code, § 11340 et seq.). If the Stipulated Surrender and Disciplinary Order is rejected by the Board as the final resolution of the pending accusation, it shall be of no force or effect, except for this paragraph it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree to the following Order.

ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 467819, issued to Respondent James Steven Clay, is surrendered.

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1 1. The surrender of Respondent's Registered Nurse License shall constitute the
2 imposition of discipline against Respondent. This stipulation constitutes a record of the discipline
3 and shall become a part of Respondent's license history with the Board.

4 2. Respondent shall lose all rights and privileges as a registered nurse in California as of
5 the effective date of the Decision and Order.

6 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
7 issued, his wall certificate on or before the effective date of the Decision and Order.

8 4. If he ever applies for licensure or petitions for reinstatement in the State of California,
9 the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws,
10 regulations and procedures for licensure in effect at the time the application or petition is filed,
11 and all of the charges and allegations contained in Accusation No. 2012-303 shall be deemed to
12 be true, correct and admitted by Respondent when the Board determines whether to grant or deny
13 the application or petition.

14 5. If and when Respondent's license is reinstated, he shall pay to the Board, costs
15 associated with its investigation and enforcement pursuant to Business and Professions Code
16 section 125.3 in the amount of \$2,085.00. Respondent shall be permitted to pay these costs in a
17 payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the
18 Board from reducing the amount of cost recovery upon reinstatement of the license.

19 6. If Respondent should ever apply or reapply for a new license or certification, or
20 petition for reinstatement of a license, by any other health care licensing agency in the State of
21 California, all of the charges and allegations contained in Accusation, No. 2012-303 shall be
22 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
23 Issues or any other proceeding seeking to deny or restrict licensure.

24 7. Respondent shall not apply for licensure or petition for reinstatement for two (2)
25 years from the effective date of the Decision and Order.

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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order.

DATED:

February 15, 2012J. Clay RW
JAMES STEVEN CLAY
RespondentENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted.

Dated:

Feb. 16, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

Carol Romeo

CAROL ROMEO
Deputy Attorney General
Attorneys for Complainant

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Stipulation.rtf

Exhibit A

Accusation No. 2012-303

]»

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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2012-203*

13 **JAMES STEVEN CLAY**
14 **1489 Webster #404**
15 **San Francisco, CA 94115**
16 **Registered Nurse License No. 467819**

A C C U S A T I O N

Respondent.

17 Complainant alleges:

18 PARTIES

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about August 31, 1991, the Board of Registered Nursing issued Registered
23 Nurse License Number 467819 to James Steven Clay (Respondent). The Registered Nurse
24 License expired on July 31, 2003, and has not been renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), of the Code, the Board may renew an expired license at any time within eight years after the expiration. After the expiration of such eight-year period the board may require as a condition of reinstatement that the applicant pass such examination as it deems necessary to determine his present fitness to resume the practice of professional nursing.

7. California Code of Regulations, title 16, section 1419.3, provides that a licensee may renew a license that has been expired for more than eight years by paying the renewal and penalty fees specified in Section 1417 and providing evidence that he or she holds a current valid active and clear registered nurse license in another state, a United States territory, or Canada, or by passing the Board's current examination for licensure.

8. Section 118, subdivision (b), of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

9. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

1 “(a) Unprofessional conduct, which includes, but is not limited to, the following:

2 ...

3 “(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action
4 against a health care professional license or certificate by another state or territory of the United
5 States, by any other government agency, or by another California health care professional
6 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that
7 action.”

8 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

9 10. Code section 4021 states:

10 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
11 11053) of Division 10 of the Health and Safety Code.”

12 11. Code section 4022 provides:

13 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
14 humans or animals, and includes the following:

15 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
16 prescription,’ ‘Rx only’ or words of similar import.

17 “(b) Any device that bears the statement: ‘Caution: federal law restricts this device to sale
18 by or on the order of a _____,’ ‘Rx only,’ or words of similar import . . .

19 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
20 prescription or furnished pursuant to Section 4006.”

21 12. Fentanyl, also known by the brand name Sublimaze, is a Schedule II controlled
22 substances as designated by Health and Safety Code section 11055, subdivision (c)(8), and a
23 dangerous drug within the meaning of Code section 4022. It is a strong analgesic,
24 pharmacodynamically similar to merperdine and morphine. It is used preoperatively, during
25 surgery and in the immediate postoperative period. Among other applications, the drug may be
26 used in the management of breakthrough cancer pain.

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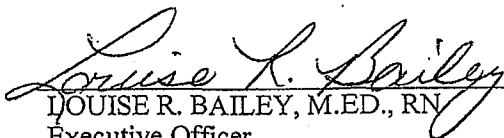
1 in March 2008, Respondent failed to submit his monthly reports as required. In March 2009,
2 Respondent was reminded that he had missing drug screen results from previous months. In June
3 2009, at a committee meeting, Respondent submitted some reports, but was unable to verify all
4 previous drug screens. Respondent was reported to the New Mexico Board on or about August
5 13, 2009, and the New Mexico Board issued a "Serious Letter of Concern." On or about August
6 28, 2009, Respondent called the Diversion Program and reported that he relapsed in or about July
7 2009, by diverting Fentanyl from the workplace. Respondent also reported that he had been
8 suspended from work. Respondent's supervisor confirmed Respondent's diversion and
9 termination with the Diversion Program coordinator. The New Mexico Board found that the
10 diversion of controlled substances from the workplace was a violation of Respondent's Diversion
11 Program contract.

12 PRAYER

13 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
14 Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

- 15 1. Revoking or suspending Registered Nurse License Number 467819, issued to James
16 Steven Clay;
- 17 2. Ordering James Steven Clay to pay the Board of Registered Nursing the reasonable
18 costs of the investigation and enforcement of this case, pursuant to Business and Professions
19 Code section 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.

21
22 DATED: October 5, 2011


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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